



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

AUG 05 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5954 9612

Mr. John Gibilaro, Supervisor of Building Operations
Department of General Services
Town of Hempstead
350 front Street
Hempstead, New York 11550-4047

Re: Notice of Complaint and Proposed Assessment of a Civil Penalty
Town of Hempstead
SPDES Tracking No. NYR20A390
Docket No. CWA-02-2013-3310

Dear Mr. Gibilaro:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA") is issuing to you as a result of our determination that the Town of Hempstead located at One Washington Avenue, Hempstead, New York, is in violation of Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311 and 1342. This Complaint is filed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of up to \$28,000 be assessed against the Town of Hempstead for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such

informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects, where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP.

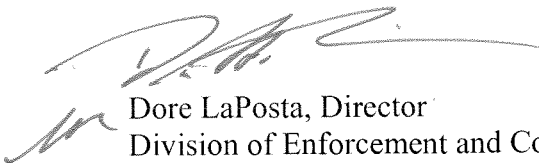
If you have any questions or wish to discuss a settlement of this matter with EPA by an informal conference, please immediately contact:

Tim Murphy, Esq.
Water & General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3203

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. § 121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Chris Saporita, Esq. at (212) 637-3203 or by e-mail at Murphy.Tim@epa.gov, or Justine Modigliani, Chief, Compliance Section at (212) 637-4268.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy
4. Information for Small Business

cc: Karen Maples, Regional Hearing Clerk (w/ Complaint and enclosures)
Joseph DiMura, NYSDEC (w/Complaint only)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Town of Hempstead
One Washington Avenue
Hempstead, New York 11550

RESPONDENT

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2013-3310

**ADMINISTRATIVE COMPLAINT,
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. PRELIMINARY STATEMENT

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("CROP"), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Town of Hempstead ("Respondent"), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively, by discharging without a permit and by failing to comply with the terms of the New York State Department of Environmental Conservation ("NYSDEC" or "Department") State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges Associated with Construction Activity ("CGP" or "Permit") at a facility it owns and operates.

II. STATUTORY AND REGULATORY PROVISIONS AND PERMIT REQUIREMENTS

3. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.

4. Section 402(a)(1) of the CWA, 33 U.S.C. §1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
5. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. Under Section 402(b), EPA granted the NYSDEC the authority to administer the federal NPDES program in New York. EPA maintains concurrent enforcement authority with the authorized State for violations of the CWA. Additionally, the NYSDEC issues a SPDES permit to facilities for the discharge of pollutants from a point source to a navigable water of the United States.
6. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
7. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
8. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.
9. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.
10. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
11. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.
12. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
13. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities to a navigable water of the United States.

14. Section 402(p) of the CWA, 33 U.S.C. §1342(p), sets forth the requirements for the discharge of stormwater.
15. The Administrator of EPA has promulgated regulations at 40 C.F.R. §122.26(a)(1)(ii), §122.26(b)(14), and §122.26(b)(15)(i), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity. The regulations at 40 C.F.R. §122.26(b)(14)(x) and 40 C.F.R. §122.26(b)(15)(i), establish requirements for storm water discharges associated with industrial activity from construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
16. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include an individual, corporation, partnership, association or municipality.
17. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
18. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
19. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.
20. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.
21. NYSDEC’s SPDES General Permit for Stormwater Discharges associated with Construction Activity, GP-0-10-001, became effective on January 29, 2010 and expires on January 28, 2015 (“Permit” or “CGP”).
22. The term “Construction Activity(ies)” means any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility as defined in Appendix A of the CGP.
23. The term “Final Stabilization” means that all soil disturbance activities have ceased and a uniform, perennial vegetative cover with a density of eighty (80) percent over the entire pervious surface has been established, or other equivalent stabilization measures, such as permanent landscape mulches, rock rip-rap or washed/crushed stone have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement as defined in Appendix A of the CGP.
24. The terms “Municipal Separate Storm Sewer” and “MS4” are defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs,

gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...” in Appendix A of the CGP.

25. The term “Owner or Operator” means the person, persons or legal entity which owns or leases the property on which the construction activity is occurring and/or an entity that has operational control over the construction plans and specifications, including the ability to make modifications to the plans and specifications as defined in Appendix A of the CGP.
26. The term “SWPPP” means the Stormwater Pollution Prevention Plan as defined in Part III of the CGP.
27. Owners and operators regulated under 40 C.F.R. §122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15)(i), must seek CGP coverage in New York by filing a Notice of Intent (“NOI”) in accordance with the terms and conditions of the CGP.

III. FINDINGS OF FACT

28. Paragraphs 1 – 27 are re-alleged and incorporated herein by reference.
29. Respondent, Town of Hempstead is an owner/operator of the Inwood Highway Yard, a highway department garage located at 5 Cerro Street, Inwood, New York.
30. Respondent is a municipality organized under the laws of the State of New York.
31. The Town of Hempstead Inwood Highway Yard, has been in continuous operation since March 1, 2003. At the time of the Inwood Highway Yard MS4 inspection, active construction was ongoing for the replacement of underground 5,000 gallon diesel and 3,000 gallon gasoline tanks. No dewatering permit was issued for the activity. The project engineer stated that the dewatering discharge at the construction site was less than 64,800 gallons over a 24 hour period. The contractor overseeing the dewatering operation was Jeffrey Barwick, V.P., North Coast Maintenance Corporation.
32. During an inspection of the subject facility on March 28, 2013, an EPA inspector, accompanied by Edyta Korczynska, Project Engineer for Walden Associates, representing the Town of Hempstead, observed wastewater from a dewatering operation that contained sediment, fines and suspended solids. The water was to remain in a temporary 21,000 Adler frac tank to retain well bore sediment/silt which was insufficient based on the volume of flow and the amount of sediment observed at the time of the inspection. The water was instead discharging to a temporary sump, and then to a stormwater outfall entering a tributary to Jamaica Bay, a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7).
33. A representative of Walden Associates arranged to completely shut the butterfly valve on the tank, temporarily ceasing the operation which had been ongoing for at least 72 hours.

34. On April 16, 2013 representatives of Walden Associates prepared and transmitted to EPA a full summary of the dewatering activities pursuant to the Inwood Highway Yard, and the actions taken to halt the discharge, in a memorandum to EPA.

IV. CONCLUSIONS OF LAW/FINDINGS OF VIOLATION

From the Findings of Fact set forth above:

35. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
36. The Inwood Highway facility is covered under the MS4 General Permit GP-0-10-002. The dewatering operation is not an authorized discharge under Part I. A. 2 of the MS4 General Permit. The dewatering operations at the time of the inspection was not an exempted non-stormwater discharge, thus requiring a SPDES permit.
37. Dewatering operations from the site caused silt and sediment discharges to a tributary of Jamaica Bay, a water of the United States, pursuant to Section 502(7) of the Clean Water Act (“CWA”), 33 U.S.C. §1362(7).
38. The Town of Hempstead is only permitted to convey stormwater through a stormwater outfall that drains to Jamaica Bay. It is not permitted to discharge unfiltered dewatering water that contained sediment/fines and suspended solids to the storm drain described in paragraphs 32- 33 above.
39. The Town of Hempstead failed to properly operate, maintain and institute good construction practice during its dewatering operation at its Inwood Highway Garage. Based upon the facts and findings set forth in Paragraphs 32-34 above, the Town of Hempstead has violated federal NPDES requirements in violation of the Act and its implementing regulations pursuant to §301, and §402 of the CWA.
40. Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342.

V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a penalty of **\$28,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violations, and Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. Based on the Findings set forth above, Respondent is in violation of the CWA by discharging pollutants without a permit, failing to obtain permit coverage prior to start of its construction activity, and failing to submit a notice of intent form to seek permit coverage in violation of 301 and 402 of the CWA, 33 U.S.C. §§1311 and 1342. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. §22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. §22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. §22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§22.21-22.26.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a

Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. §22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e., not in accordance with the 30-day period set forth in 40 C.F.R. §22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. §22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. §22.27(c). 40 C.F.R. §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VII. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Tim Murphy, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3236

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. §22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty, **\$28,000**, within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2012-3311

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. §22.18(a)(3). In accordance with 40 C.F.R. §22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

IX. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

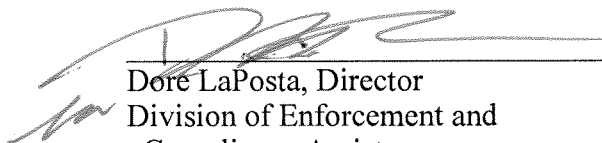
Timothy Murphy, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

X. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.

3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 5th DAY OF August, 2013.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007